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In The

# Supreme Court of the United States

VILLAGE OF MUNDELEIN, ILLINOIS,
*Petitioner*,

v.

WISCONSIN CENTRAL RAILROAD,
*Respondent*.

*On Petition for Writ of Certiorari to the Supreme Court of Illinois*

## BRIEF OF *AMICI CURIAE*, THE CITY OF GARLAND, TEXAS; THE ILLINOIS MUNICIPAL LEAGUE; THE INDIANA ASSOCIATION OF CITIES AND TOWNS; THE LEAGUE OF MINNESOTA CITIES; THE TEXAS MUNICIPAL LEAGUE, AND THE TEXAS CITY ATTORNEYS ASSOCIATION IN SUPPORT OF PETITIONER

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## INTEREST OF *AMICI CURIAE*

The City of Garland, Texas, the Illinois Municipal League, the Indiana Association of Cities and Towns, the League of Minnesota Cities, the Texas Municipal League, and the Texas City Attorneys Association, as *amici curiae*, file this brief in support of the Petitioners, the Village of Mundelein, Illinois.[1]

The City of Garland, Texas, is a home-rule municipality located in Dallas County, Texas. In the late 1800s, the two towns that eventually grew into the City of Garland were established at the cross-roads of two major railway lines. As a result, the City of Garland is virtually bisected north-south, and east-west by two active railways, each of which are crossed at grade level by dozens of major streets and highways. Any ruling on the reach of the preemptive effects of 49 U.S.C. §20101 *et seq.* (2000) will necessarily impact the City not only as to its railroad-highway grade crossings, but in other as yet unanticipated areas that cities have traditionally regulated.

The Illinois Municipal League (IML) is a non-profit, non-political association of 1,134 cities, villages, and

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[1] Pursuant to this Court's Rule 37.2(a), letters of consent from all parties regarding the filing of this brief have been filed with the Clerk. Pursuant to this Court's Rule 37.6, *amici curiae* represent that this brief was not authored in whole or in part by counsel for any party, and that no person or entity other than the *amici curiae*, their members, or their counsel made a monetary contribution to the preparation or submission of this brief. Pursuant to Supreme Court Rule 37.2(a), notice of intent to file this brief was given to counsel for all parties.

incorporated towns recognized by statute as the instrumentality of its members. 65 ILCS 5/1-8-1. The purpose and goal of the IML is to articulate, defend, maintain, and promote the interests and concerns of Illinois municipalities. Nearly all of Illinois 1,298 municipalities has a highway grade railroad crossing affected by this case. There are 13,115 highway grade railroad crossings (8,432 are public, and 4,683 are private) throughout the State of Illinois, making IML's interest in this case especially strong. (Source: Illinois Commerce Commission website and interactive map at http://www.icc.illinois.gov/rr/crossingmap.aspx, reviewed December 20, 2006).

The Indiana Association of Cities and Towns (IACT) is a voluntary association of cities and towns established in 1891 to provide Indiana municipal officials a means to congregate, educate and advocate their interests before the state and federal governments. In 2007, IACT's membership consisted of 451 of the total 567 cities and towns in the state of Indiana. As a statewide organization, IACT serves as an information clearinghouse on taxation, budgets, municipal and other transportation issues, capital financing, and related topics and annexation and is uniquely well-suited to bring matters contained in this brief to the Court's attention Any ruling on the preemptive effects of 49 U.S.C. §20101 et seq. will directly impact railroad-highway grade crossings in these cities and towns. IACT has frequently been granted amicus curiae status in the past in Indiana state courts and federal courts.

The League of Minnesota Cities (LMC) has a voluntary membership of 830 out of 854 cities in

Minnesota. LMC represents the common interests of Minnesota cities before judicial courts and other governmental bodies and provides a variety of services to its members including information, education, training, advocacy, and insurance services. LMC has a public interest in this appeal as a representative of Minnesota cities with railroad-grade crossings on public highways and streets.

The Texas Municipal League (TML) is a non-profit association of over 1,080 incorporated cities that provides legislative, legal, and educational services to its members. The Texas City Attorneys Association (TCAA), an affiliate of TML, is an organization of more than 400 attorneys who represent Texas cities and city officials in the performance of their duties. The interests of TML and TCAA are the same with regard to the matters now before this Court: the importance of local governments to provide for safe and convenient travel over municipal thorough-fares.

*Amici curiae's* specific interest in this case lies in the impact that this Court's ruling will have on local governments throughout the United States. Of all the various sorts of transportation that may fall within the ambit of interstate commerce, none is as intrusive and dangerous as stopped trains blocking railroad-highway grade crossings.

## SUMMARY OF THE ARGUMENT

Highway-grade crossings blocked by stopped trains cause havoc with local traffic patterns, impacting citizens' daily lives and business routines. In addition to inconveniencing citizens, trains stopped on

highway-grade crossings create dangerous situations for thousands of children and first responders and the people they are trying to assist everyday.

## ARGUMENT

The train that blocked the streets of Mundelein consisted of 119 railcars and three locomotives. A train that size may stretch nearly three-quarters of a mile. Depending on the layout of a city's streets, a train that size, stopped for over *two and a half hours*, will virtually shut down a city for the duration. The mischief created by a railway in that manner is easy to imagine. Stopped trains can cripple a city's ability to provide emergency medical care and police protection to those of its citizens unfortunate to be located on the wrong side of the tracks, as it were. Vehicles caught at the crossing are literally trapped, and the resulting mayhem due to disrupted traffic flows lends itself to even greater dangers (for which emergency care may be unavailable) in the way of accidents as frustrated drivers attempt to maneuver around the blockage and resultant traffic jams. Stopped trains are a dangerous and attractive nuisance for pedestrians and children. Schools, banks, hospitals, and all kinds of commerce are brought to a grinding halt when railcars stop on grade crossings throughout cities and towns all over America, and particularly in the Midwest and western states.

The problem of blocked crossings is so real and universal that nearly 30 states and hundreds of cities have enacted laws prohibiting blocked crossings. The railways, however, want to play their preemption trump card, claiming that some Federal regulations

that sort of apply (in a square peg and round hole manner) means that no State, no city may tell the railways how long is too long to block a crossing. Yet, inasmuch as the railways have failed to identify even one Federal regulation that directly applies to how long a train may block public streets, if state and local laws are indeed preempted, there is absolutely nothing that prevents a railway from blocking a grade crossing with impunity, whenever, wherever, and indeed forever.

The concerns faced by cities, towns and villages today were not considered as problematic before the introduction of the automobile in the early 1900's.

> Initially, safety at highway-rail grade crossings was not considered a problem. Trains were few in number and slow, as were highway travelers who were usually on foot, horseback, horse-drawn vehicles, or cycles. By the end of the century, crossing collisions were increasing and communities became concerned about safety and delays at crossings. Many states, cities, and towns adopted laws, ordinances, and regulations that required the railroads to eliminate some crossings and provide safety improvements at others.[2]

A grid method of street placement was typically used as cities developed, as in Garland, Texas. As a

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[2] Railroad-Highway Grade Crossing Handbook - Revised Second Edition August 2007, Federal Highway Administration, available at *http://safety.fhwa.dot.gov/xings/07010/sec01.htm*

result, cities and towns across the country can be divided by stopped railroad cars in both a north-south directions and east-west directions. The number of highway-grade crossings is staggering.

> A crossing over the railroad was often provided for every street, resulting in about 10 crossings per mile. In 2005, there were 248,273 total intersections of vehicular and pedestrian traveled ways with railroads. This equates to approximately 2.4 crossings per railroad line mile.[3]

In 2005, there were 147,805 grade level crossings in the United States. Of these, sixty-one percent, or 90,274, of public at-grade crossings were located in rural areas, compared to 57,531 in urban areas. The majority of crossings are located on local roads, requiring local governments to bear the unique impacts of stopped railcars on local roads with at-grade crossings. The impediment of stopped railcars not only impedes the flow of traffic, but also results in longer public safety response times and other dangerous and deadly consequences.

A review of news articles shows how dramatically trains blocking grade-crossings imperils lives in ways that have nothing to do with "rail safety." For instance, in Huron and Ottowa Counties, Ohio, school children crawl under and over trains to reach their

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[3] *Id.*

schools or homes.[4] "In Sandusky, children have crawled under stopped trains that were blocking streets, said City Manager Gerald Lechner." While Sandusky was able to work with the railroad in that instance to resolve the problem, Sandusky's school children are not the only ones at risk.

Children in Henry County, Ohio face similar problems:

> "[T]here have been many times when trains have been stopped in town before and after school hours, at least preventing some students from getting to classes on time. So they aren't late, 'Kids crawl under them,' Hatfield said. 'How many lives are we going to have to lose before something is done?'"[5]

The lives of children in a south Nashville, Tennessee neighborhood are similarly at risk.

> Helen Stalons, who's lived in the neighborhood for 39 years, says that she sees children crawl under or over the trains "at least once a week" to catch the school bus. The bus stop is on the

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[4] See *Towns Trapped by Trains*, Chesapeake and Ohio Historical Magazine, Dec. 1999 (available at *http://findarticles.com/p/articles/mi_qa3943/is_199912/ai_n8859765*, last visited May 28, 2008).

[5] *Task Force In Henry County Tracks Hazardous Crossings*, Cresent News, Feb. 25, 2001, (available at *http://www.angelsontrack.org/cn022501.html*. last visited May 28, 2008).

other side of the tracks, and if the kids don't want to miss their ride, they have little choice.

"Some'll go under the train, and some'll crawl over," she says of the children who must risk their lives to get to school.[6]

School children are not the only ones at risk when trains block grade crossings. EMT, paramedic, and fire departments are routinely kept from providing services by blocked grade crossings. In one case an elderly man who takes heart and respiratory medication on a regular schedule was blocked from getting to his medication by a train sitting on the tracks.

Fischer says that while waiting, he started to hyperventilate. "I was about to pass out, but I managed to call 911."

Metro police and EMS workers arrived with sirens blaring. It became clear to them that Fischer would need his meds, and soon. He says that the Metro officials called CSX but to no avail. The train didn't budge.

"I had to give my keys to [an EMT], and he had to climb over the train," Fischer says. The EMT had to "walk to my house, find the meds and

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[6] *A Neighborhood Railroaded,* Nashville Scene, Nov. 17, 2007, (available at *http://www.nashvillescene.com/Stories/News/2007/11/15/A_Neighborhood_Railroaded/*, last visited May 28, 2009).

> bring them back to me.... The train was still there when he got back. He had to climb over the train again to get back to me."[7]

In La Salle, Colorado, a blocked crossing prevented police from effectively responding to a bank robbery in progress, while La Salle firefighters have crawled under railroad cars blocking intersection to provide medical care to an individual on the other side of the train.[8] These are not isolated incidents, but are sadly routine for communities and citizens throughout the United States.

Congress could not have intended such a bizarre result when it enacted the Federal Railroad Safety Authorization Act. The ordinance at issue in this case, and the dozens of state and local laws like it are there for a reason. Until the Federal authorities promulgate a clearly applicable regulation governing how long a railway may block highway crossings, without ordinances of the sort the Village of Mundelein has in effect, nothing will prevent the sort of problems described above.

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[7] *Id.*

[8] *La Salle Railroad Crossing: Battle of a Century,* The Tribune, Feb. 19, 2008, (available *http://www.greeleytrib.com/article/20080219/NEWS/229770616*, last visited on May 28, 2008).

## CONCLUSION

*Amici curiae* respectfully request this Court to grant the petition for writ of certiorari in order to address the important questions presented in this case.

Respectfully submitted,

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